

REMARKS/ARGUMENTS

Reconsideration is requested. Claims 1-12 are pending. Responsive to the Final Office Action of February 23, 2005, the Examiner's comments and the cited art have been noted and studied. For reasons to be set forth in detail below, it is respectfully submitted that the present application is in condition for allowance, and such action is requested.

Independent claims 1, 5 and 10 have been amended to clarify the presently claimed subject matter. In particular, these claims have been amended to recite that the reagent pad is underlying and "immediately" adjoining the aperture (support at, for example, FIGs. 2 and 3 of the original disclosure). In this regard, Applicants note that the Office Action of June 15, 2004 suggested that language should be used that better describes the reagent layer as being adjacent to and in physical contact as well as underlying the aperture (see page 7, paragraph 2 of the Office Action of June 15, 2004). However, as an "aperture" is essentially an opening, it can not physically contact the reagent pad. Therefore, the term "immediately" (i.e., directly) has been employed.

Independent claims 1, 5 and 10 have also been amended to clarify the portions that correspond to the "optical viewing area" (support at, for example, page 3, lines 23-29 of the disclosure) and to clearly recite that the bottom surface is a surface of the "support" (see, for example, page 4, lines 22-23 of the disclosure). Independent claims 5 and 10 have also been amended to correct a clerical error related to the recited upper wavelength (support at, for example, page 3, lines 23-29 of the disclosure).

Claims 4, 8, 15, 17 and 23 have been amended to recite that the color parameters are those of the Commission Internationale de L'Eclairage. See, for example, paragraph 0004 of the specification.

It is respectfully submitted that the amendments above are supported by the specification, claims, abstract of the disclosure, and drawings as originally filed, and that no new matter has been added.

35 U.S.C. §102 Rejections:

The subject matter of claims 1, 2 and 10 was rejected under 35 U.S.C. §102 as anticipated by U.S. Patent No. 6,299,838 to Hirayama et al. (hereinafter “Hirayama”). The subject matter of claims 3 and 11 was rejected under 35 U.S.C. §103(a) over Hirayama.

Applicants’ understanding of Hirayama was detailed in the Amendment of November 29, 2004. Independent claims 1 and 10, as currently amended, each recite the presence of “a reagent pad affixed to the support and underlying and immediately adjoining the sample receiving aperture.” In addition, independent claims 1 and 10, as currently amended, clearly recite that the “aperture and the portion of the bottom surface of the support surrounding the aperture with a reflectivity of less than about 12 percent between about 600 and 730 nm” correspond to an optical viewing area.

Hirayama does not describe, suggest or teach a test device or system as recited in amended claims 1 and 10. For example, Hirayama does not describe, teach or suggest a reagent pad affixed to a support such that the reagent pad underlies and **immediately adjoins** a sample receiving aperture or that the aperture and surrounding portion of the bottom surface of the support with a specified reflectivity correspond to an optical viewing area. Rather, as understood, Hirayama simply describes and teaches that a detecting area of unspecified reflectivity be covered by a colored cover. Furthermore, Hirayama appears to teach that a reagent layer (element 4 in FIG. 1 of Hirayama) be immediately adjoining to a sample holding room (element 4 in FIG. 1 of Hirayama) and not the sample supplying hole (element 51 of Hirayama).

For at least the foregoing reasons, Applicants respectfully submit that the subject matter of amended claims 1 and 10 is neither anticipated nor obvious over Hirayama and is allowable under 35 U.S.C. §102(e). Since claims 2, 3 and 11 depend from and further limit their associated independent claim, they are patentable for at least the same reasons.

35 U.S.C. §103 Rejections:

The subject matter of claims 3-9 and 11 was rejected under 35 U.S.C. §103(a) over Hirayama in view of U.S. Patent No. 5,843,692 to Phillips et al. (hereinafter “Phillips”). In this regard, Phillips was cited for volume and notch teachings.

Independent claim 5 recites a reagent pad that underlies and **immediately** adjoins an aperture and that the “aperture and the portion of the bottom surface of the support surrounding the aperture with a reflectivity of less than about 12 percent between about 600 and 730 nm” correspond to an optical viewing area. As explained above with respect to claims 1 and 10, Hirayama does not describe, teach or suggest such a configuration. Furthermore, Phillips does not cure the deficiencies of Hirayama. Applicants, therefore, submit that the subject matter of independent claim 5 is not obvious over the cited combination of Hirayama and Phillips and is allowable under 35 U.S.C. §103(a). Since claims 3, 4, 6-9 and 11 depend from and further limit their associated independent claim, they are patentable for at least the same reasons.

CONCLUSION

Applicants respectfully request that, in light of the amendments and explanations above, the Examiner reconsider and withdraw his rejections. Applicants respectfully submit that the claims are in condition for allowance. In the event that minor claim amendments are necessary to meet formal requirements, Applicants invite the Examiner to telephone the undersigned so that issuance can be expedited.

The Commissioner is hereby authorized to charge any required fees due in connection with this submission, including petition and extension of time fees, and to credit any overpayment to Deposit Account No. 10-0750 (Docket No. LFS-123US/MM) (Johnson & Johnson).

Respectfully submitted,

Dated: June 22, 2005

By: _____ /Mayumi Maeda/ _____
Mayumi Maeda
Reg. No. 40,075

Philip Johnson, Esq.
Johnson & Johnson
International Patent Law Division
P.O. Box 1222
New Brunswick, NJ 08903
Phone: 408-956-4790